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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMI BALY, petitioner

-against-

AFFIDAVIT IN SUPPORT
OF MOTION FOR LEAVE TO REARGUE
22-CV-5812

CHIEF JUSTICE
LUARA TAYLOR SWAINE/respondent

I, RAMI BALY, file Prose (U.S.C. 28 Title 1654)) being duly sworn declare under penalty of perjury that the following facts are true and correct: make this affidavit in support of the motion to reargue a decision and order in a dismissal of Order to Amend.

In response to a dismissal in request of certificate of appealability, of an 'Order to Amend', to recharacterize, habeas corpus under 28 U.S.C. 2254, petitioner RAMI BALY, claims the submission of his case was damaged which administration failed to serve papers timely to the order, injuring the conclusion of the 2254 petition as a dismissal.

Introduction

This motion is a Notice of Appeal of the dismissal, in relief of a reconsideration to hear BALY'S, recharacterization for 'certification of appealability' to be granted being requisite to file, habeas to contest a 2017 conviction, 22-CV-5812, which BALY'S remedies are exhausted at the state level. The appeal shows cause to how the damages of serving papers, damaged the District Chief Judge, LUARA TAYLOR SWAINE request

of BALY's, recharacterize injuring the ability to be granted certificate of appealability under 2254 habeas corpus under the jurisdiction of Federal Courts, which; the District Courts have jurisdiction to request a Supreme Court justice to petition a lower court under a habeas statute.

The motion should be rewarded to BALY, because, it is held in good faith being that, in order to appeal to the United States Court of Appeals, for the Second Circuit, that, the party must show excusable neglect or good cause, for ability to file the notices of appeal by the deadline.

1.

BALY did submit the motion for 2254(a) Habeas during the 30 day, statute of limitations period. Therefore, that the papers were incorrectly served or possibly tampered on behalf of the courts administration, this is a neglect of services. The 30 day period ended on Aug 9th, 2022, which BALY dropped the Amended order for recharacterization at the Supreme Court of New York, Prose intake unit, in person in an envelop along with a filled out 2254 form, which stated the reason for the request, with legal theory supporting the allegations, and the relief sought. The District Judge SWAINE dismissed the case on Sept 12th, and sent the letter to BALY on Sept 14th, 2022, in statement that, one, BALY never submitted the 2254 order which, grants that the dismissal was based upon... further adding that forma pauperis under 28 U.C.S. 1915(a)(3) was not granted.

2.

The actions taken against BALY was out of neglect based on the sufficient clear and convincing evidence that, the inability to file the notice was on behalf of the Court administrations misapprehension of duty, to locate the file.

3.

In BALY's, 28 U.S.C. 2254 habeas, BALY, shows cause along with the requested ration which supported by legal theoryn sufficient to the orders request. BALY'S Certificate of Appealability, to grant Habeas review, meets the requirements, being that the case contest a malicious prosecution which led to an unlawful conviction, and false arrest, which are both discretionary questions within the jurisdiction, being that they touch of questoins of constitutional law.

Under the 14th Amendment, all Citizens are to receive equal treatment to the law, due process clause. BALY'S argument is valid and meets ther requirements to be heard. The requested recharacterization to BALY, shows clear and convincing evidence, to how habeas applies to his case, along with supporting legal theory.

The request of reconsideration is held in good faith, being that the information of provides, under Rule 56, motion for summary judgment, that neglect was to the cause which, negligence of papers not being properly to be reviewed, damaged the case by neglecting the argument be be the conclusion instead of the dismissal. The injury in turn, damages BALY'S statute of limitations, to respond to the requested order of LAURA TAYLOR SWAINE'S Order to Amend, as recharacterization under 2254, within 30 Days.

On Sept 14th, Chief Judge SWAINE, submitted papers by the mail, to serve BALY the notice of dismissal which BALY never received. After arriving to the courts to search for the case, on Nov 3rd, 2022, BALY dismissal notice was located in the Clerks, file and catalogs. As a result of the actions, it is clear and convincing evidence that BALY'S dismissal was based upon neglect of insufficient court services to receive served

papers and to serve papers. This is what led SWAINE to dismiss BALY'S case, claiming that BALY will not be granted Forma Pauperis 28 U.S.C. 1915(a)(3) for the Certificate of appeal.

Conclusion

As a relief, BALY request to appeal and vacate the dismissal, and enter a reconsideration of the 2254 habeas argument, and further correction to appeal perfect over the issue. The motion to reconsider should be granted. The argument is held in good faith, it shows that Rule 56 is met by presenting clear and convincing evidence that, both; neglect of court services, and good cause, is met. Being that the jurisdiction of the matter, this case is held in good faith, in request of appeal. 409 who may appeal judgment in Art 78 proceedings Under the Civil Practice Law and Rules, an aggrieved party or a person substituted for him or her may appeal from any appealable judgment or order except one entered upon the default of the aggrieved party. An intervenor may appeal from a judgment in an Art. 78 Proceeding.

The failure of a petitioner to appeal to the appellate division from an order dismissing his or her petition on the merits constitutes a forfeiture of the right to litigate the dismissal on the merit, notwithstanding that the respondent appealed from that part of the order which granted the petitioner leave to apply anew.

Determining a motion to dismiss the courts must satisfy that, There is no trial uses of fact, for if there is, it should not summarily dispose of the proceeding on motion. For example, if the question of the application is the statute of limitations, raises an issue of fact, the issue should be determined on a formal hearing rather than on motion papers.

Nonetheless, when the dispositive facts and position of the parties are fully set forth in the record, thereby making it clear that no dispute as to the facts exist and that no prejudice will result for the filer to require an answer, the court may rehear the merits of the petition in an art 78 proceedings and grant the petitioner judgment thereon notwithstanding the lack of any answer and without giving the respondent a further opportunity to answer the petition.

WHEREFORE, I request that the court grant reargument.

Dated: , 14th November, 2022

The County of New York

(SIGNATURE OF PERSON MAKING
APPLICATION - BEFORE A NOTARY PUBLIC)

Sworn to before me this
day of November 14th, 2022

NOTARY PUBLIC: STATE OF NEW YORK


REQUEST FOR JUDICIAL INTERVENTION
SUPREME COURT, COUNTY OF

Index No: _____ Date Index Issued: _____

CAPTION Enter the complete case caption. Do not use et al or et al. If more space is needed, attach a caption rider sheet.**For Court Use Only:**

IAS Entry Date

RAMI BAILY

Plaintiff(s)/Petitioner(s)

-against-

Chief Judge United States District Court
LAURA TAYLOR SWAINE SDNY

Defendant(s)/Respondent(s)

Judge Assigned

RIJ Filed Date

NATURE OF ACTION OR PROCEEDING Check only one box and specify where indicated.**COMMERCIAL**

Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
 Contract
 Insurance (where insurance company is a party, except arbitration)
 UCC (includes sales and negotiable instruments)
 Other Commercial (specify): _____

NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the COMMERCIAL DIVISION RIJ ADDENDUM (UCS-840C).

MATRIMONIAL

Contested
NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RIJ ADDENDUM (UCS-840M). For Uncontested Matrimonial actions, use the Uncontested Divorce RIJ (UD-13).

REAL PROPERTY Specify how many properties the application includes: _____

Condemnation
 Mortgage Foreclosure (specify): Residential Commercial
 Property Address: _____

NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the FORECLOSURE RIJ ADDENDUM (UCS-840F).

Partition
NOTE: Complete and attach the PARTITION RIJ ADDENDUM (UCS-840P).
 Tax Certiorari (specify): Section: _____ Block: _____ Lot: _____
 Tax Foreclosure
 Other Real Property (specify): _____

OTHER MATTERS

Certificate of Incorporation/Dissolution [see NOTE in COMMERCIAL section]
 Emergency Medical Treatment
 Habeas Corpus
 Local Court Appeal
 Mechanic's Lien
 Name Change/Sex Designation Change
 Pistol Permit Revocation Hearing
 Sale or Finance of Religious/Not-for-Profit Property
 Other (specify): _____

SPECIAL PROCEEDINGS

Child-Parent Security Act (specify): Assisted Reproduction Surrogacy Agreement
 CPLR Article 75 – Arbitration [see NOTE in COMMERCIAL section]
 CPLR Article 78 – Proceeding against a Body or Officer
 Election Law
 Extreme Risk Protection Order
 MHL Article 9.60 – Kendra's Law
 MHL Article 10 – Sex Offender Confinement (specify): Initial Review
 MHL Article 81 (Guardianship)
 Other Mental Hygiene (specify): _____
 Other Special Proceeding (specify): _____

STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.

YES NO

Has a summons and complaint or summons with notice been filed? If yes, date filed: _____
 Has a summons and complaint or summons with notice been served? If yes, date served: _____
 Is this action/proceeding being filed post-judgment? If yes, judgment date: _____

NATURE OF JUDICIAL INTERVENTION Check one box only and enter additional information where indicated.

Infant's Compromise
 Extreme Risk Protection Order Application
 Note of Issue/Certificate of Readiness
 Notice of Medical, Dental or Podiatric Malpractice
 Notice of Motion
 Notice of Petition
 Order to Show Cause
 Other Ex Parte Application
 Partition Settlement Conference
 Poor Person Application
 Request for Preliminary Conference
 Residential Mortgage Foreclosure Settlement Conference
 Writ of Habeas Corpus
 Other (specify): _____

Date Issue Joined: November 2022Relief Requested: reargue

Return Date: _____

Relief Requested: formal papers

Return Date: _____

Relief Requested: be brief review

Return Date: _____

Relief Requested: _____

motion to leave for reargue 2254 (Dismissal)

RELATED CASES

List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case
Bearyue	22-cv-5812	District Court United States	Laura Taylor Sunseri	Chief Judge

PARTIES

For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: NOV 14th, 2022

Rui Bai

Signature

Prize (28 U.S.C. 1654)
Attorney Registration Number

Attorney Registration Number

RAMI BAILY Signature

Print Name

Rami Baly (Prose)
765 Amsterdam Avenue Apt # 4B
New York, NY 10025

Prose Intake



Attn: Laura Swaine Chief Judge
The Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, N.Y. 10007-1312

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